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FIRST GENERAL COUNSEL'S REPORT

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MUR: 6853
DATE COMPLAINT FILED: July 18, 2014
DATE OF NOTIFICATION: July 24, 2014
LAST RESPONSE RECEIVED: September 11, 2014
DATE ACTIVATED: October 30, 2014

EARLIEST SOL: January 15, 2019
LATEST SOL: August 7, 2019
ELECTION CYCLE: 2014

COMPLAINANT:

Ralph Mann

RESPONDENTS:

Weston Wamp for Congress 2014 and Danny
Johnson II in his official capacity as treasurer
Lamp Post Group, LLC
Thomas Weston Wamp

RELEVANT STATUTES
AND REGULATION:

52 U.S.C. § 30104(b)¹
52 U.S.C. § 30116(a)
52 U.S.C. § 30116(f)
52 U.S.C. § 30118(a)
11 C.F.R. § 113.1(g)

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

Complainant alleges that Congressional candidate Thomas Weston Wamp received unreported contributions from his employer, Lamp Post Group, LLC ("Lamp Post"), when Lamp Post provided Wamp with a paid leave of absence to run for Congress. Respondents deny that Wamp received a paid leave of absence from Lamp Post. As discussed below, we recommend that the Commission find no reason to believe that Respondents violated 52 U.S.C. §§ 30116(a),

¹ On September 1, 2014, the Federal Election Campaign Act of 1971, as amended (the "Act"), was transferred from Title 2 to new Title 52 of the United States Code.

1 30116(f), 30118(a) or 30104(b) (formerly 2 U.S.C. §§ 441a(a), 441a(f), 441b(a) and 434(b)) and
2 close the file in this matter.

3 **II. FACTUAL AND LEGAL ANALYSIS**

4 **A. Factual Background**

5 Thomas Weston Wamp² was a 2014 candidate for the United States House of
6 Representatives from Tennessee's Third Congressional District, and Weston Wamp for Congress
7 2014 and Danny Johnson II in his official capacity as treasurer (the "Committee") was his
8 principal campaign committee. Since 2010, Wamp has been employed by Lamp Post, a limited
9 liability company based in Tennessee, which provides financial investment and business advice to
10 entrepreneurs and start-up companies.³ The Committee describes Wamp as a founding director
11 and Director of Communications at Lamp Post.⁴

12 Complainant alleges that Wamp was on a paid leave of absence from his employment at
13 Lamp Post during his 2014 campaign for U.S. Congress and, thus, received contributions from
14 Lamp Post that the Committee did not disclose.⁵ The Complaint is based on a news article that

² On January 15, 2014, Wamp filed his Statement of Candidacy under the name Thomas Weston Wamp. The Complaint and Responses by the Committee and Lamp Post refer to him as "Weston Wamp."

³ Committee Resp. at 1 (Aug. 7, 2014); Lamp Post Resp. at 2 (Sept. 11, 2014).

⁴ Committee Resp. at 1.

⁵ In support of this allegation, Complainant also notes that Wamp's financial disclosure report shows that Wamp received a significantly higher salary in 2014 — *i.e.*, the year he was running for Congress — than he did in 2013. According to the financial disclosure report that Wamp filed with the U.S. House of Representatives on May 14, 2014, Lamp Post paid Wamp a salary of \$24,000 in 2013 and \$67,203 in 2014. Compl. at 1 and Attach. 1. The Committee and Lamp Post each assert, however, that Wamp's original financial disclosure statement transposed the 2013 and 2014 salary figures. Committee Resp. at 1; Lamp Post Resp. at 4. Indeed, Wamp filed an amended financial disclosure statement on August 6, 2014, reporting receipt of a \$67,203 salary from Lamp Post in 2013 and \$24,000 for the first four months of 2014. See Lamp Post Resp. at Attach. B (Wamp Amended Financial Disclosure Report).

1 appeared in the *Chattanooga Times Free Press*, which is attached to the Complaint.⁶ The news
2 article reported that Lamp Post founder and partner, Allan Davis, said Wamp had been on paid
3 leave since he started campaigning in January 2014, though another partner, Jack Studer, stated
4 that Davis was mistaken because Wamp was working during this time but not during traditional
5 work hours.⁷ In the article Studer is quoted as saying, “[w]e don’t have a paid leave status –
6 [Wamp’s] not in it He continues to work with other companies who need him. But he’s
7 working more remotely. His schedule has obviously flexed a lot to make up for that workload.”⁸
8 Wamp is also quoted in the article as saying, “[f]or the six-and-a half months I’ve been
9 campaigning, I’ve been active at Lamp Post. I’ve been working remotely. I’ve been in and out of
10 the office Obviously, while I’ve been campaigning, I’ve been out a bit. But I think Davis
11 misspoke.”⁹

12 In response to the Complaint’s allegation, the Committee and Lamp Post each assert that
13 Lamp Post partner Allan Davis erred by describing Wamp as being on a paid leave of absence
14 during the campaign. Lamp Post asserts, supported by a sworn affidavit by Studer, that neither
15 Wamp’s duties nor his compensation changed after he became a candidate in January 2014.¹⁰

⁶ Compl. Attach. 2 (July 18, 2014) (Louie Brogdon, *Congressional Candidate Weston Wamp’s Work Status Raises Questions*, CHATTANOOGA TIMES FREE PRESS, July 16, 2014).

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* The news article in the *Chattanooga Times Free Press* also reported that Allan Davis made a \$300,000 contribution to Character Counts PAC (“Character Counts”) to help Wamp’s campaign. Character Counts is an independent expenditure committee that reported receiving contributions totaling \$445,000 during 2014, with the entire amount contributed by Davis, and independent expenditures totaling \$389,484 in support of Wamp. The news article reported that since Davis made the \$300,000 contribution to Character Counts, he and Wamp made efforts to keep distance from each other. We have no information of any communication between Davis and Wamp that would suggest coordination in connection with Character Counts’ expenditures. See 11 C.F.R. § 109.21.

¹⁰ Lamp Post Resp. at 1-2, 4 and Attach. A, Aff. of Jack Studer ¶ 10 (“Studer Aff.”). See also Committee Resp. at 1.

1 According to Lamp Post, during the campaign period of January to August 2014,¹¹ Wamp
2 fulfilled all of the duties and responsibilities of his employment including offering strategic
3 advice to Lamp Post companies and assisting in the firm's media relations, and promoting
4 entrepreneurship in Chattanooga.¹² Lamp Post also asserts that Wamp was working non-
5 traditional hours at the firm while he was a candidate,¹³ that employees generally do not have
6 specific work hours and are not required to keep time records, and that working remotely is a
7 common practice at the company.¹⁴ Furthermore, Lamp Post asserts that Wamp's compensation
8 was similar to other firm employees with similar experience, and his salary was within the range
9 that the U.S. Department of Labor Statistics has compiled for comparable positions in Tennessee
10 for advertising managers or public relations managers.¹⁵ Studer avers that Wamp's compensation
11 in 2014 for the full year is \$72,000, which is similar to firm employees who have worked a
12 similar period of time,¹⁶ and Lamp Post asserts that Wamp's compensation was exclusively for
13 services provided.¹⁷ Finally, Lamp Post asserts that it does not have a policy allowing for paid
14 leaves of absence.¹⁸

¹¹ Wamp lost the primary election on August 7, 2014.

¹² Lamp Post Resp. at 5.

¹³ *Id.* at 1.

¹⁴ *Id.* at 2 and Studer Aff. ¶ 8.

¹⁵ Lamp Post Resp. at 6.

¹⁶ Studer Aff. ¶ 9.

¹⁷ Lamp Post Resp. at 5.

¹⁸ Studer Aff. ¶ 4.

B. Legal Analysis

Under the Act, authorized committees, such as Weston Wamp for Congress, must report all contributions in their disclosure reports.¹⁹ The term "contribution" includes "any gift, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office,"²⁰ and "any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value . . . to any candidate, campaign committee, or political party or organization," in connection with any election to any federal office.²¹ Payments for compensation shall be considered contributions unless: (A) The compensation results from *bona fide* employment that is genuinely independent of the candidacy; (B) The compensation is exclusively in consideration of services provided by the employee as part of this employment; and (C) The compensation does not exceed the amount of compensation which would be paid to any other similarly qualified person for the same work over the same period of time.²²

Further, no person may make a contribution to a candidate with respect to any election in excess of the limit at 52 U.S.C. § 30116(a)(1)(A) (formerly 2 U.S.C. § 441a(a)(1)(A)), which was \$2,600 per election during the 2014 election cycle. Candidates and political committees are prohibited from knowingly accepting excessive contributions.²³

¹⁹ 52 U.S.C. § 30104(b) (formerly 2 U.S.C. § 434(b)); 11 C.F.R. § 104.3.

²⁰ 52 U.S.C. § 30101(8) (formerly 2 U.S.C. § 431(8)).

²¹ 52 U.S.C. § 30118(b)(2) (formerly 2 U.S.C. § 441b(b)(2)); 11 C.F.R. § 114.2(b)(1).

²² 11 C.F.R. § 113.1(g)(6)(iii); *see, e.g.*, Advisory Opinion 2013-03 (Bilbray-Kohn) (applying section 113.1(g)(6)(iii) to determine whether compensation paid to candidate would be a contribution); Advisory Opinion 2011-27 (New Mexico Voices for Children) (same).

²³ 52 U.S.C. § 30116(f) (formerly 2 U.S.C. § 441a(f)).

1 Corporations are prohibited from making contributions to federal candidates or their
2 authorized committees, and candidates and authorized committees are prohibited from knowingly
3 receiving or accepting such contributions.²⁴ A contribution by a limited liability company
4 ("LLC") that elects to be treated as a partnership by the Internal Revenue Service, pursuant to
5 26 C.F.R. § 301.7701-3, or does not elect treatment as either a partnership or corporation, shall be
6 considered a contribution from a partnership pursuant to 11 C.F.R. § 110.1(e).²⁵ An LLC that
7 elects to be treated as a corporation by the Internal Revenue Service, pursuant to 26 C.F.R.
8 § 301.7701-3, or an LLC with publicly-traded shares, shall be considered a corporation pursuant
9 to 11 C.F.R. Part 114.²⁶

10 Based upon the information provided in the Committee's response and in Lamp Post's
11 response, including the Studer affidavit, it appears the compensation Lamp Post paid to Wamp in
12 2014 resulted exclusively from *bona fide* employment independent of his candidacy, and that the
13 compensation did not exceed the amount of compensation which would be paid to any other
14 similarly qualified person for the same work over the same period of time. First, the information
15 establishes that Wamp was working full time at the firm, rather than being on a paid leave of
16 absence, while a congressional candidate and describes his work responsibilities and various firm
17 projects that he worked on while a candidate. Further, Wamp had been employed by the firm for
18 nearly four years prior to becoming a candidate in 2014, and Lamp Post asserts that Wamp's
19 compensation was solely related to the work he provided, and demonstrated that his salary was
20 within the range of public relations managers and advertising managers in the state of Tennessee.

²⁴ 52 U.S.C. § 30118(a) (formerly 2 U.S.C. § 441b(a)); 11 C.F.R. § 114.2(a) and (b)(1).

²⁵ 11 C.F.R. § 110.1(g)(2).

²⁶ 11 C.F.R. § 110.1(g)(3).

Moreover, there is no information substantiating the allegation that Wamp was on a paid leave of absence other than the statement by Lamp Post partner Allan Davis, which was contradicted in a sworn statement by another Lamp Post partner, Jack Stuber.

Thus, the compensation that Wamp received from Lamp Post while he was a candidate does not appear to be a contribution to the Committee or Wamp under 11 C.F.R. § 113.1(g)(6)(iii). Accordingly, there is no corresponding obligation by the Committee to report a contribution under 52 U.S.C. § 30114(b) (formerly 2 U.S.C. § 434(b)). Because there is no excessive or corporate contribution, we recommend that the Commission find no reason to believe that the Committee violated 52 U.S.C. §§ 30116(f), 30118(a) or 30104(b) (formerly 2 U.S.C. §§ 441a(f), 441b(a) and 434(b)) or that Thomas Weston Wamp violated 52 U.S.C. §§ 30116(f) or 30118(a) (formerly 2 U.S.C. §§ 441a(f) and 441b(a)). We also recommend that the Commission find no reason to believe Lamp Post violated 52 U.S.C. §§ 30116(a) or 30118(a) (formerly 2 U.S.C. §§ 441a(a) and 441b(a)).²⁷

III. RECOMMENDATIONS

1. Find no reason to believe that Weston Wamp for Congress 2014 and Danny Johnson II in his official capacity as treasurer violated 52 U.S.C. §§ 30116(f), 30118(a) or 30104(b) (formerly 2 U.S.C. §§ 441a(f), 441b(a) and 434(b)).
2. Find no reason to believe that Thomas Weston Wamp violated 52 U.S.C. §§ 30116(f) or 30118(a) (formerly 2 U.S.C. §§ 441a(f) and 441b(a)).
3. Find no reason to believe that Lamp Post Group, LLC, violated 52 U.S.C. §§ 30116(a) or 30118(a) (formerly 2 U.S.C. §§ 441a(a) and 441b(a)).
4. Approve the attached Factual and Legal Analysis.

²⁷ Because the available information does not indicate whether Lamp Post files its taxes as a partnership or a corporation, *see* 11 C.F.R. § 110.1(g), our recommendations include provisions regarding both excessive and prohibited contributions.

6. Close the file.

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